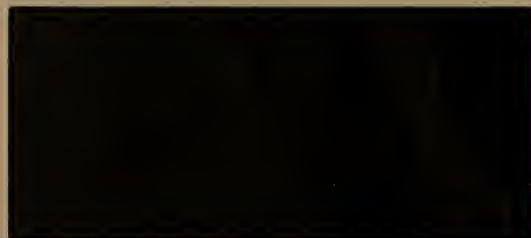


SPECIAL REPORT
OF THE
STATE ETHICS COMMISSION

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SPECIAL REPORT
OF THE
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STATE ETHICS COMMISSION
SPECIAL REPORT
1978-1983

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INTRODUCTION

The State Ethics Commission was created by Chapter 210 of the Acts and Resolves of 1978. That statute provided for annual disclosure of financial interests by public officials and employees at the state and county levels, and empowered the new, independent Ethics Commission to enforce the financial disclosure law (G.L. c. 268B) and the conflict of interest law (G.L. c. 268A). Chapter 210 became law on June 5, 1978; the Commission's charge to administer and enforce the two laws took effect on November 1, 1978.

Chapter 210 embodied several important new concepts:

1) Civil enforcement of the conflict of interest law. Until 1978, the conflict of interest law carried only criminal penalties. While many of the more serious violations of the law (for example, bribery) traditionally had been prosecuted, the criminal process was legitimately deemed too harsh for a whole host of other violations involving divided loyalties, influence peddling, self-dealing and misuse of power. Thus, these violations often went unchecked. Civil enforcement seemed to offer an appropriate middle ground. After finding a violation, the Commission was authorized to impose civil penalties of up to \$1,000 per violation (raised to \$2,000 per violation in March, 1983), or to file suit to recover any economic advantage gained by individuals or businesses in violation of the conflict law and up to twice that amount in additional damages. This provided for remedial action tailored to the offense, be it a hundred dollars or several thousand dollars or a lawsuit to recover tens of thousands of dollars.

2) Advisory Opinions - Authority for issuing advisory opinions under Chapter 268A was transferred from the Attorney General to the Ethics Commission.

3) Financial Disclosure - The filing requirements of the financial disclosure law were designed to remind government officials of their special obligation to keep their private interests separate from their public obligations and to provide a public record of some of their private associations.

4) Municipal Disclosure - Chapter 210 required the Commission to develop a recommendation for implementing financial disclosure for municipal officials and to submit that proposal to the legislature by the first Wednesday in December, 1979.

The Commission consists of five members appointed to staggered terms of five years. Three are selected by the Governor, one by the Secretary of State and one by the Attorney General. No more than two of the gubernatorial appointments and no more than three members in all can be of the same political party. Members as well as staff are prohibited from certain political activities during their term and for one year after leaving the Commission.

The original members of the Commission appointed in 1978 were:

- * James Vorenberg, Dean of Harvard Law School, appointed as Chairman by Governor Michael S. Dukakis
- * Linda Kistler, Professor of Accounting at the University of Lowell, appointed by Governor Dukakis.
- * Jessie Doyle Deely, Attorney from Lee, Massachusetts, appointed by Governor Dukakis
- * David Brickman, newspaper publisher and editor, appointed by Attorney General Francis X. Bellotti.
- * Marver Bernstein, President of Brandeis University, appointed by Secretary of State Paul Guzzi.

Since 1978, the following appointments have been made:

- * Reverend Bernard P. McLaughlin, Chaplain at Logan International Airport, appointed in 1979 by Governor Edward J. King to replace Commissioner Deeley.
- * Joseph I. Mulligan, Jr., attorney from Boston, Massachusetts, appointed in 1981 by Governor King to replace Commissioner Kistler.
- * Frances M. Burns, faculty member of the Boston University School of Law, appointed in 1982 by Secretary of State Michael Joseph Connolly to replace Commissioner Bernstein.

(Commissioner Brickman was reappointed in 1980 by Attorney General Bellotti to a full-five year term.)

The Commission's full-time staff includes attorneys, special investigators, analysts, accountants and other professional and support personnel. The staff is organized into four general areas: investigation/enforcement; legal analysis; disclosure administration and public education/information. The overall size of the staff has remained nearly constant since 1978 (increasing only from 23 to 25 in the last 5 years).

ENFORCEMENT

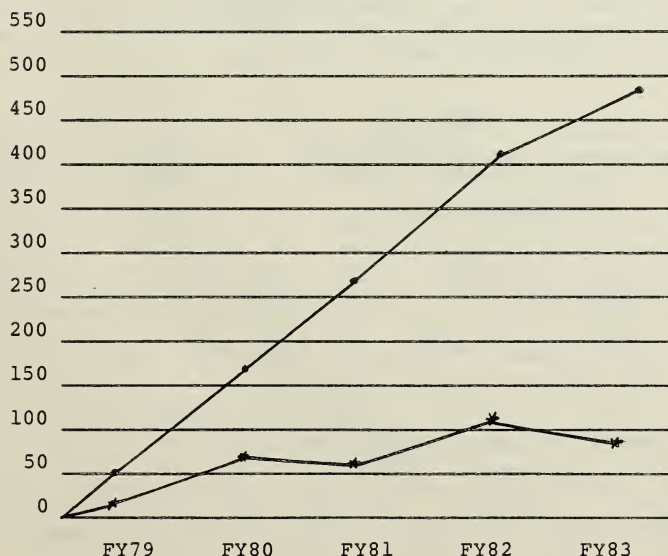
Under Chapter 268B the Commission is required to initiate a confidential Preliminary Inquiry into any alleged violation of Chapter 268A or 268B upon the receipt of either a sworn complaint or of other evidence which is "deemed sufficient by the Commission." It was not until the fall of 1979 that the Commission had an investigative staff able to respond to such complaints.

CHART # 1

YEARLY BREAKDOWN OF COMPLAINTS AND PRELIMINARY INQUIRIES

Complaints

Preliminary Inquiries * * * * *

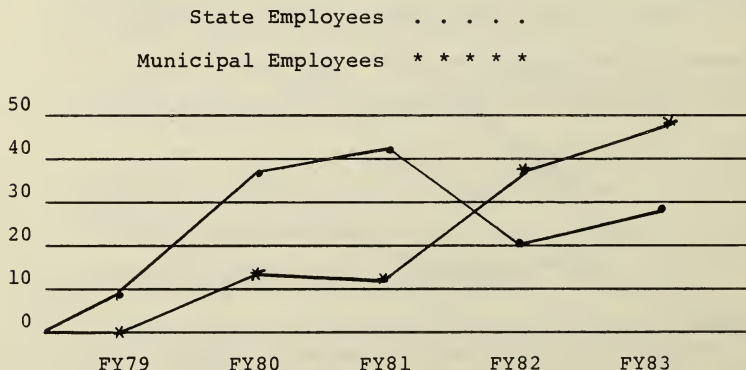


Since 1978, the Commission has received a total of 1517^{1/} complaints. After an initial review by the staff, those which could be corroborated by some independent evidence were submitted to the Commission for authorization to begin a Preliminary Inquiry. Three hundred and sixty-nine (369)^{2/} of the complaints, or twenty-four percent of the total, have resulted in Preliminary Inquiries. Of these Inquiries, 295 involved alleged violations of the conflict of interest law, the remaining 74 concerned violations of the financial disclosure law -- usually because of a late filing. Chart #1 presents the yearly record of complaints and inquiries. The fact that the number of investigations has not risen as dramatically as the number of complaints reflects the fact that many matters which are reported to the Commission do not fall within its jurisdiction, and, more importantly, that many matters can be, and are, resolved without formal action. In many such cases, the individuals involved are simply advised how to conform their conduct to the requirements of the law.

The yearly increase in the number of complaints received by the Commission is attributable to growing public awareness of the conflict law and the Commission's role in enforcing it. The fact that this awareness has gradually reached the municipal level of government is evident in Chart #2 which shows that the number of municipal employees who have become the subjects of Preliminary Inquiries has been rising while the number of state employees investigated has decreased somewhat since FY81.

CHART # 2

SUBJECTS OF PRELIMINARY INQUIRIES - (C. 268A)



^{1/} This number includes complaints received in FY84 through October 31.

^{2/} This number includes Preliminary Inquiries authorized in FY84 through October 31.

If a Preliminary Inquiry produces sufficient evidence for finding "reasonable cause to believe" that either law has been violated, the Commission has several options. It may, upon majority vote, 1) authorize issuance of an Order to Show Cause initiating adjudicatory proceedings, including a public hearing, to determine whether a violation has occurred; 2) file a lawsuit in Superior Court to recover the economic advantage gained as a result of a violation of the conflict law; or 3) enter into a Disposition Agreement with the subject (a public document in which the individual agrees that he violated the law and will, in most cases, pay a stated penalty). In less serious matters the Commission may issue a confidential Compliance Letter to advise an individual of violations and explain the consequences if the prohibited conduct continues.

Of the 369 preliminary inquiries initiated to date, 117 (or 32%) have ended with a finding of no reasonable cause. In the remainder (252), the following action was taken:

| | |
|-----------|--|
| 87 | Compliance Letter Issued |
| 93 | Disposition Agreement Executed |
| 21 | Hearing Held and Decision and Order Issued ^{1/} |
| 16 | Lawsuit Filed |
| <u>35</u> | Pending |
| 252 | Total |

Though the Commission has found violations of all the sections in Chapter 268A which apply to state or municipal employees, violations of one of those sections accounted for 19 of those actions or 30% of the total. Section 19 prohibits municipal employees from participating in matters in which they or certain people close to them have a financial interest unless they have secured written permission to act from an appointing official. In comparison, the corresponding section of the law restricting state employees in a similar way resulted in only 5 enforcement actions. This statistic confirms what common sense would suggest: the chance that a government official may be in a position to act on matters affecting his own financial interests or those of his close relatives and business partners is greatest at the local level.

Until March, 1983, when it was raised to \$2,000, the maximum fine which the Commission could impose for a violation of Chapter 268A or 268B was \$1,000. Since late 1979 when the Commission first exercised its authority to assess civil penalties, a total of \$301,931 in fines and damages has been

^{1/} Of the 21 Decisions and Orders issued, 10 have been appealed to the courts. In those 10, the action of the Commission has been affirmed in 6 and reversed in 1; the remaining 3 are pending.

collected. It should be noted, however, that in 14 cases resolved by Disposition Agreement or Decision, no penalties were imposed. In many others, the fines amounted to less than \$500. At the other end of the spectrum (see Chart No. 3), in individual cases involving multiple violations of a serious nature, penalties of \$5,000 and above have been assessed. In other words, as anticipated, civil enforcement has allowed remedial action tailored to the offense. For example, whereas a state official was fined \$12,000 for receiving thousands of dollars in discounts and charge privileges from businesses he regulated, another public official was fined \$500 for receiving much smaller discounts and using agency property for personal use. Whereas a county treasurer was fined over \$5,000 for securing sizeable personal loans from banks with which he invested county money, a selectman was simply ordered to give up golfing privileges extended to him by a local club because of his official position. Whereas a member of a local Board of Assessors was fined \$10,000 for, among other things, significantly lowering the assessment on property he owned through a secret trust, another local official was fined \$250 for taking official action which marginally benefited his brother.

Civil enforcement has also allowed unique responses to unique problems. In a public compliance letter, the Commission called for the end within a year of longstanding personnel practices in the Department of Mental Health which violated the conflict of interest law. In this way, the individual situations which numbered over 700 were brought into conformity with the law without any serious disruption of services. In another case, pursuant to a Disposition Agreement which imposed no fine, city officials were ordered to end the practice of city employees accepting private fees for expediting the preparation of municipal lien certificates.

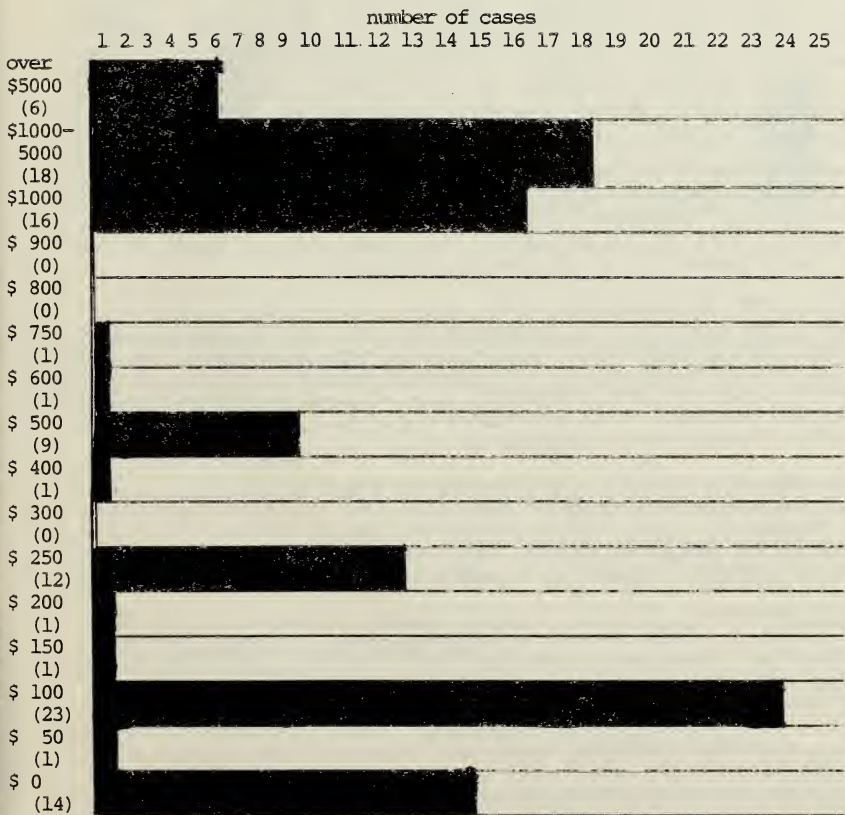
Finally, lawsuits to recover monies realized in violation of the conflict law have been particularly useful when directed toward people in the private sector who have had improper dealings with public officials. For example, in two separate civil recovery actions the Commission recouped:

- * \$105,000 in damages and interest from a California-based architectural firm which had made illegal political contributions knowing that they would come to the attention of state officials responsible for the award of a state contract which they wanted; and
- * \$98,757 from a Watertown bank which granted a substantial loan to a county treasurer who maintained county accounts at the bank.

Thus, civil enforcement has proven to be an effective and flexible enforcement option. It is safe to conclude that without this alternative, a wide variety of activities would have gone unpenalized and would have escaped any public scrutiny.

CHART # 3

FINES IMPOSED



ADVISORY OPINIONS

Any individual covered by Chapters 268A or 268B is entitled to request an advisory opinion regarding his or her duties under the law in a given situation.

The enactment of Chapter 268B transferred responsibility for issuing conflict of interest opinions to state and county employees from the Attorney General to the State Ethics Commission. However, except in unusual circumstances, municipal employees still seek the opinion of their city solicitor or town counsel. An opinion rendered by the Commission serves as a defense in a criminal action brought under Chapter 268A. It also binds the Commission in subsequent proceedings concerning an employee who requested an opinion and acted in good faith, unless the opinion request omitted or misstated material facts. Since the Commission assumed responsibility for conflict opinions in November, 1978, requests for opinions have been, by law, confidential. The law does permit the Commission to publish its opinions with identifying information deleted.

Since 1979 the Commission has issued 774 advisory opinions^{1/} to public employees. In comparison, the Attorney General rendered a total of 856 opinions in the 17 years between 1962 and 1978. At the very least, this increased volume of requests for advice about Chapter 268A suggests a new awareness of the law and reflects the concern of large numbers of public employees that they conform their conduct to it.

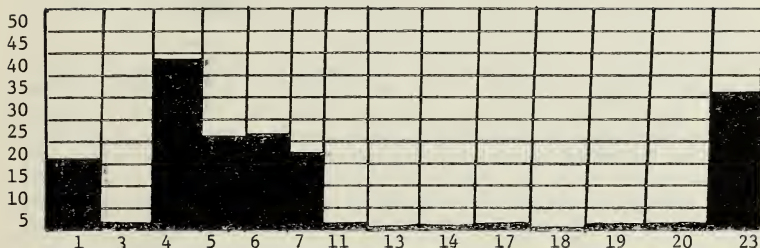
The Commission staff has tried over the last five years to promptly respond to all opinion requests. Most advisory opinions are now rendered within three weeks of the time when they are requested. In addition, the Commission staff responds to hundreds of informal requests for advice by phone and letter.

Many advisory opinions involve questions relating to more than one section of the law. It is interesting to note, however, that 39% of all questions concerned the restrictions on outside employment and other activities as set out in Section 4 of the conflict law. (See Chart No. 4.) Section 5, which limits the activities of former state employees, and Section 6 which prohibits a state employee from participating in a matter in which he or those with whom he is closely associated by family or business ties, have a financial interest - each accounted for, respectively, another 22% or 23% of all requests.

^{1/} Through October 31, 1983.

CHART #4

CONFLICT OF INTEREST OPINIONS -
PERCENTAGE BY SECTION OF CHAPTER 268A



The 774 advisory opinions rendered by the Commission since 1978 answer a wide variety of questions about application of the conflict law to individual situations. Examples of the kinds of topics addressed include:

- * private law work of state lawyers
- * restrictions on the acceptance of honoraria by state employees
- * status of individuals who serve on informal advisory committees and task forces
- * psychological testing and counseling of private patients by state employees
- * job offers to state employees by private parties having matters before the employees' agencies
- * associations between lawyer-legislators and lobbyists
- * status of higher education faculty members for purposes of the conflict law
- * state employees serving in elected or appointed municipal offices
- * state employees whose private employment raises concern over the impartiality and credibility of their agency's proceedings

- * state employees who serve as directors of private organizations having dealings with the state
- * standards to determine whether an individual is a state employee under G.L. c. 268A
- * conditions under which the financial interest in a state contract of a state employee's spouse will be imputed to the state employee
- * the nature of the state's interest in local licensing of cable television
- * selectmen serving as teachers and other forms of dual office holding at the local level
- * the application of the "rule of necessity" when a potential conflict blocks governmental action
- * restrictions on the acceptance of special ticket privileges by local officials at locally run civic centers
- * restrictions on the acceptance of free passes to private theatres by officials who must act on matters of interest to those theatres
- * limitations on election campaign-related activities of state and county employees
- * state employees who have a financial interest in a second contract made by their own or another state agency.

Recently the Commission introduced a new method of informing public employees about the requirements of the conflict law -- the Commission Advisory. The purpose of these interpretative bulletins is to provide guidance to public officials and employees on Chapter 268A-related problems of general application which have not been previously addressed in adjudicatory proceedings or advisory opinions. Although Advisories do not carry the weight of law, they clarify the requirements of Chapter 268A and announce the Commission's general policy regarding certain activities. The first two advisories have discussed 1) restrictions on a state official's hiring for private work of an individual who works for him as a state employee and 2) restrictions on the acceptance by legislators of honoraria and expenses for speaking engagements.

FINANCIAL DISCLOSURE

With the enactment of the financial disclosure law in 1978, Massachusetts joined 40 other states and the federal government in requiring public officials and employees to disclose certain financial interests. The Massachusetts law, Chapter 268B, requires public disclosure of interests and associations which may create a potential for conflict between an individual's official responsibilities and private interests.

Prompt and fair implementation of this new statute was the Commission's first order of business. Mindful of the initial uncertainty that accompanies any new law, and of the particular anxieties raised by this one, the Commission made every attempt to work in cooperation with affected individuals. In its interpretations of the reporting requirements, the Commission sought to balance the public's right to know relevant information about a public official with the official's right to privacy in matters unrelated to potential conflicts of interest.

Chapter 268B requires the following individuals serving in state and county government to file annual Statements of Financial Interests with the State Ethics Commission:

- * Every candidate for elected office,
- * Every elected official, and
- * Certain public employees who hold "major policy making positions."

Since the first filing in 1979, 21,356 Statements of Financial Interests (SFIs), or approximately 4300 a year, have been filed with the Commission. The law provides that any individual who submits a written request to the Commission can inspect and copy any SFI. Nearly 5,000 of those written requests have been received and honored since 1979. This figure does not suggest that 5,000 different Statements have been inspected, however, since many Statements, most notably those of elected public officials, have been inspected more than once, and most Statements have never been inspected at all. Most of the inspection requests came from newspaper and broadcast reporters. The Statements most often requested were those of legislators and members of the judiciary.

The Commission has achieved nearly 100% compliance with the filing requirements of Chapter 268B every year. Failure to file, or to amend a deficient or incomplete Statement within ten days of receiving a Formal Notice of Delinquency, is a violation of the law. The Commission may levy penalties, including fines of up to \$2,000, for each violation. The statute also provides criminal penalties of fine and imprisonment for filing a false Statement.

CHART # 5.

YEARLY FINANCIAL DISCLOSURE STATISTICS

Record of filings in:

| | 1979 | 1980 | 1981 | 1982 | 1983 |
|---|-------|--------|-----------------------------------|--------|--------|
| Total # of Statements Filed* | 3259 | 4204 | 4247 | 4828 | 4818 |
| No. of Delinquency Notices Sent | 95 | 62 | 208 | 637 | 254 |
| No. who, without valid excuse, failed to comply with notice | 1 | 5 | 3 (as of October 31, 1983) | 57 | 32 |
| Fines Imposed for Late Filing | \$ 50 | \$1400 | \$300 (as of October 31, 1983) | \$2950 | \$4880 |
| Inspection Requests | 1725 | 1010 | 629 | 833 | 1286 |
| Calls for Assistance | 2000 | 1000 | 800 | 900 | 600 |

* These numbers include Statements filed by new state and county employees after the May filing deadlines.

As indicated on Chart #5, there has been some fluctuation from year to year in the number of individuals who missed the May filing deadlines and consequently were sent Formal Notices of Delinquency. We believe that some of these differences are directly attributable to the extent to which the Commission staff acted to remind individuals to file. For the first three filing years the Commission staff went to extraordinary lengths to assist filers in meeting the deadlines. Every person who was required to file and failed to do so was contacted by the staff, first by telephone and then by formal letter pursuant to the statute.

In 1982 the staff did not make reminder phone calls, but merely issued the Formal Notices of Delinquency. This change, combined with an unusually high number of incorrect or obsolete address for filers, accounts for the unusually high number of individuals who missed the May filing deadlines that year.

In 1983 two new procedures were tried to reduce the number of late filings without resorting to the time-consuming process of calling each delinquent filer:

- 1) Commission staff requested home addresses for all filers to avoid mailing delays (filers still did not have to record their home addresses on their SFI) and

- 2) well before the filing deadlines, postcard reminders were sent to those who had not yet filed. Public announcement of the civil penalties imposed on late filers in 1982 also served to encourage timely compliance with the law's requirements. As a result of these efforts, only 254 individuals missed the deadline for filing their 1983 Statements.

Each completed Statement is inspected by Commission staff. Specific criteria are applied in this inspection process to identify potential conflicts of interest, apparent inconsistencies on an individual's form and the intent to withhold required information. When these problems are not satisfactorily explained by the filer, the matter may be turned over to the enforcement unit for investigation.

After five years the systems and procedures for collecting the financial disclosure statements and making them accessible to the public are well established. The forms have been refined and clarified and the staff has helped some 4,800 filers who have requested assistance -- all in an effort to facilitate the filing process. By and large, the anxieties often expressed 5 years ago about the extent of the information required and the uses to which it might be put have dissipated with each successive year and the requirements of Chapter 268B are being met.

It remains at this point in time to assess those requirements and the Commission's implementation of them to determine whether there are any areas in the financial disclosure process which need improvement. In light of its experience over the last five years, the Commission plans to conduct a comprehensive review of Chapter 268B for that purpose with the following general questions in mind:

- 1) Should the definition of the "major policy making position" be refined?
- 2) Should the obligation to file be tied to the Management Classification Plan in some way?
- 3) Should the financial disclosure system be automated so that data could be sorted and reported more readily?
- 4) Should there be any changes in the kind of information reported?

MUNICIPAL DISCLOSURE

The fourth part of the legislative mandate related to financial disclosure at the local level. The financial disclosure requirements of Chapter 268B apply only to state and county government. Chapter 210 directed the Commission to propose legislation establishing financial disclosure requirements for officials and employees of cities, towns and special districts of the Commonwealth. In response to that directive, the Commission submitted the proposed Chapter 268C, an Act Requiring certain Officials and Employees of Cities, Towns and Special Districts in the Commonwealth to file Statements of Financial Interests, and an accompanying Report to the Legislature in December, 1979. The Commission's goal was to prepare legislation which furthered the basic purpose of financial disclosure -- to assure that public office is not used for private gain -- while minimizing the burden on those who file and administer financial disclosure at the local level.

In addressing its mandate, the Commission reviewed municipal disclosure requirements in other states, drew upon its experience interpreting and administering Chapter 268B and sought comments from a wide range of local officials and others with expertise in the structure and workings of local government. The Commission developed its proposal after holding six public hearings across the state, soliciting written comments from over 500 local officials and employees and meeting with over thirty groups of local officials.

The proposed statute would have required key elected and appointed officials in municipal government to report business associations, gifts, honoraria and reimbursements from sources doing business with their city or town, interests in local real estate and certain debts owed to, or forgiven by, those doing business with their city or town. Chapter 268C would have required a "conflict-related" disclosure which would make public only that limited information directly related to the potential for conflicts between an official's public and private interests.

The bill, filed by the Commission for consideration in 1980, did not pass. It was re-submitted for the 1981 session, but again did not pass. A similar bill was filed for the 1983 session by a member of the House of Representatives and is presently pending.

Though this comprehensive approach to the question of municipal disclosure has not passed, a bill providing for disclosure by officials of the City of Marlborough was signed into law in the Spring of 1983. Implementation of this law will provide some useful information about the practical problems of municipal disclosure. Recent consideration by the Boston City Council of an ordinance requiring city officials to file disclosure statements has also contributed to renewed interest in the subject.

* * * * *

The preceding sections have reviewed the Commission programs and activities mandated by Chapter 210. In two other areas the Commission has undertaken projects not specifically outlined in the law. Summaries of these follow.

PUBLIC EDUCATION

From the beginning, the State Ethics Commission has demonstrated its commitment to a goal not prescribed by either Chapter 268A or B -- that of informing government employees and the public at large of the laws' requirements. The Commission staff has developed and implemented an extensive public education program to encourage voluntary compliance with the statutes. We have sought to match the deterrent value of our enforcement actions against those who break the laws with encouragement and advice for those seeking to obey them.

The educational programs have also been designed to raise general awareness about and concern for the much discussed problem of corruption in Massachusetts government. In meetings with public employees and private citizens all over the state, Commission staff have explained the theories behind the conflict of interest and financial disclosure laws and the reasons why government employees must in some cases be held to a higher standard than those working in the private sector. At the same time, we have expressed our growing conviction, based on five years' experience, that the vast majority of government employees willingly accept those restrictions and are careful to limit their private activities accordingly. Though this positive message about the dedication of most government employees has been an important part of the Commission's public education program, it is, by its very nature, a less newsworthy item than the imposition of a heavy civil penalty for wrongdoing -- and so, is often ignored.

To accomplish its educational purposes, the Commission has produced and distributed thousands of copies of pamphlets and booklets explaining the laws, including:

1. General Laws Chapter 268A Conflict of Interest Opinions.

A set of Opinions issued in 1979, with index and brief summaries included.

A set of Opinions issued in 1980, with index and brief summaries included.

A set of Opinions issued in 1981, with index and brief summaries included.

A set of Opinions issued in 1982, with index and brief summaries included.

1983 Enforcement Actions and Opinions as printed.

2. GUIDE TO THE CONFLICT OF INTEREST LAW - Revised 1983 (covers activities of state employees).

3. ANNOTATED GUIDE TO THE CONFLICT OF INTEREST LAW - Revised 1983 (covers activities of state employees).

4. GUIDE TO THE CONFLICT OF INTEREST LAW FOR MUNICIPAL EMPLOYEES

5. STATE ETHICS COMMISSION ENFORCEMENT ACTIONS, 1979-1982

6. BULLETINS of the State Ethics Commission. The BULLETINS report Commission policies, decisions and practices. They are designed to inform and assist persons who are subject to the conflict of interest and financial disclosure laws.

7. PAMPHLETS:

"Introduction to the Massachusetts State Ethics Commission"

"Massachusetts Conflict of Interest Law for State Employees"

"Massachusetts Conflict of Interest Law for Municipal Employees"

"Massachusetts Financial Disclosure Law"

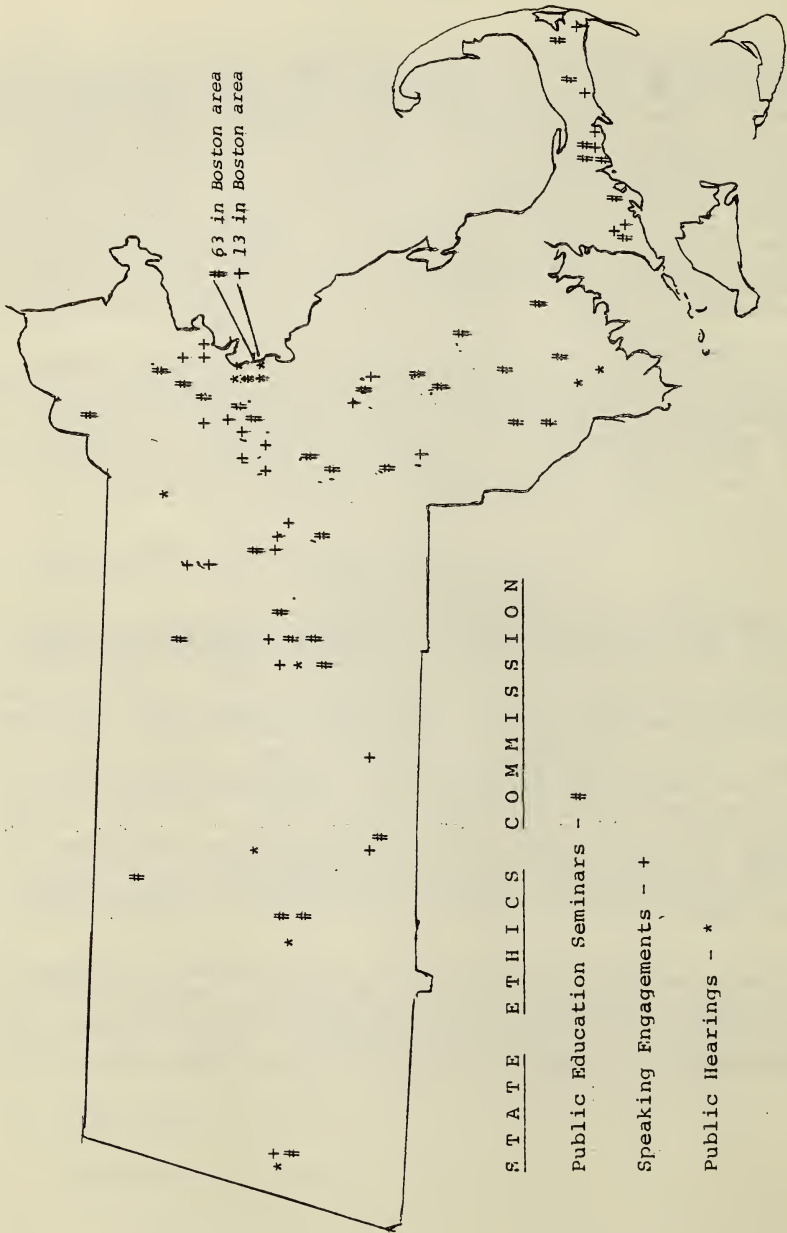
The Commission has also sponsored meetings to increase awareness of the laws and support for their enforcement. In addition to four major conferences, Commission staff have, over the last five years, conducted 98 workshops on the conflict law for employees of government agencies and 40 speaking engagements for special interest groups. As shown on the map on page 18, these meetings have taken place all over the state. They have involved large state agencies and small towns, elected officials and appointed ones, legislators and selectmen, private organizations and public associations, the press and the private bar. In addition, a three-hour training module on the conflict law was produced in FY83 for use in the Bureau of Employee Development's program to train agency instructors.

Recognizing that its effectiveness in large part depended on persuading others, both within and outside of government, of the importance of its charge and the seriousness of its purpose, the Commission has worked in close cooperation with other agencies at all levels of government to achieve its goals. This cooperation has taken many forms -- ranging from informal advice to the drafting of formal agency Codes of Conduct.

LEGISLATIVE REFORM

In 1982 the Commission conducted a systematic review of Chapter 268A including three public hearings and discussions with public officials and employees at more than 50 seminars and meetings around the state. The Commission's review was initiated for several reasons. First, concerns about conflicts of interest had multiplied in response to allegations of political corruption at all levels of government. Second, between 1978 and 1982, the Commission had rendered nearly 500 advisory opinions, reviewed over 800 matters referred to it for possible investigation, and conducted more than 200 Preliminary Inquiries. These actions enabled the Commission to determine where the law might apply too harshly or too loosely in actual situations. Finally, its mandate committed the Commission to making the law's provisions as clear and relevant as possible to the realities of government in the 1980's.

As a result of its review, the Commission proposed a comprehensive legislative package to clarify, refine and update the 20 year old conflict law. The Commission's recommendations did not represent a reworking of the law. Rather, each element of the law was analyzed to ensure that it still reflected the law's fundamental purposes.



On December 29, 1982, the Governor signed into law Chapter 612 of the Acts of 1982 which contained most of the Commission's major proposals amending Chapter 268A and Chapter 268B of the General Laws. Among those amendments which went into effect on March 29, 1983 are the following:

- * Clarification in Chapter 268A of the definitions of "special" employees at all levels of government to require that the designations be a matter of record based on clear standards set out in the law.
- * Changes in Sections 7 and 20 of Chapter 268A to allow public employees to have, under certain limited conditions, financial interests in contracts with the level of government which employs them.
- * An additional exemption from Section 7 of Chapter 268A, allowing state employees under certain circumstances to work part-time at a state mental health, public health or correctional facility, or any other state facility that provides services around the clock, seven days a week.
- * Amendment to Section 21 of Chapter 268A to grant the State Ethics Commission and district attorneys the authority, now held exclusively by cities and towns, to bring civil recovery suits as a result of a violation of the municipal provisions of Chapter 268A.
- * Amendments to Section 23 of Chapter 268A to 1) extend to former employees the prohibitions against improper disclosure of confidential information which now apply to current employees; and 2) repeal Section 23(f).
- * Amendment to Section 4 of Chapter 268B increasing the maximum penalty which the Commission can impose for a single violation from \$1,000 to \$2,000.
- * Addition of a new Section 8 to Chapter 268B to prohibit officials or employees from taking adverse employment action against an employee for filing a complaint with, providing information to, or testifying before the State Ethics Commission.

CONCLUSION

The preceding pages have recorded the activities of the State Ethics Commission from October 1978 through October 1983. Opinions will differ as to the significance of these activities and as to their effect on the way government business is conducted in Massachusetts. But any assessment of these facts should also take into account what has not happened in the last five years.

First, there has not been a mass exodus of people choosing to leave public service rather than disclose their personal financial interests. To be sure, there were some who left government for that reason. They and others in good faith raised legal and policy questions concerning disclosure. However, the overwhelming majority of those required to file came to terms with disclosure and accepted it as a necessary, and not particularly onerous, part of government service.

Second, the Commission has not functioned as a "kangaroo court." Those who argued that the same agency could not investigate a matter, make a charge and then fairly adjudicate that matter have been proven wrong. The Commission operates with internal safeguards to ensure that judgements at each stage of a matter will be determined on the merits of the case at that stage, without regard to previous decisions. While its enabling statute requires the Commission to both authorize an inquiry and make a reasonable cause determination on the basis of that inquiry, the Commission members do not participate in the actual investigation of the case. Moreover, the staff has been organized in such a way that no one who has been involved in an investigation may ever play any role, advisory or otherwise, in the Commission's final decision-making process. In fact and in theory, the Commissioners have shown that they are not "psychologically wedded" to the charges made. In many instances individuals have been found in violation on only some of the charges leveled. In others, they have been exonerated altogether.

Third, the Commission has not acted irresponsibly. There were those who warned of witch-hunts. It was even written that "the Ethics Commission will...entrap politicians by setting them up, offering them bribes, committing a crime under the umbrella of law enforcement to create a crime." Whether or not one agrees with all the Commission's actions and interpretations of the law, and whether or not one accepts the general concept of and need for such an agency, one would be hard pressed to make a case that the Commission has gone on witch-hunts or resorted to entrapment.

That these things have not happened must be credited in large part to the soundness of the legislation passed by the General Court in 1978 and to the support the Commission has generally received from the constitutional officers who appoint its members, from the legislature and from the two administrations in office since 1978.

Throughout, the Commission has remained firmly committed to one overriding principle -- that it does not enforce personal notions of ethics or morality, but rather two state laws. We believe these laws to be reasonable and fair and, regretfully, necessary. But we recognize that neither these, nor any other statutes can guarantee "good government". Morality cannot be legislated; competence cannot be legislated; responsibility and good judgement cannot be legislated. In the final analysis we must always rely on the good sense of good people. Our experience with Massachusetts government employees over the last five years has shown that the majority of them are honest, that they want to know the "rules of the game" and conform their conduct to those rules, and that they need and deserve the support of an informed public.

